IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 578 OF 2007

Smt. Varsha Rubin T. Zaveri ..Petitioner

Vs.

1. Shri Pannalal Khimji Chheda and ors. ..Respondents

Mr. S.R. Chitnis, Senior Advocate with Mr. Jayant Gohil for petitioner.

Mr. P.K. Dhakephalkar, Senior Advocate with Mr. Ajay Patil for respondent nos.1,3 and 4.

Ms. S.N. Gajare, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 02, 2007.

P.C.:

1. Heard Mr. Chitnis the learned Senior Counsel with Mr. Gohil for the petitioner-complainant and Mr.Dhakephalkar the learned Senior Counsel with Mr.Patil for the respondent nos.1,3 and 4. The learned APP appears for the State.

2. In R.A.E. Suit No. 402 of 1985 Misc. Application was taken out alleging that the respondents had committed offences punishable under Sections 191, 200, 463, 464 and 471 read with Section 34, 120(B) of IPC and, therefore, the said application was taken out under Section 340 of Cr.P.C. praying the court to take cognizance of the said offences. By an order dated 8/11/2006 the learned Judge of the Small Causes Court was pleased to direct that the application be kept for hearing along with the suit. The complainant-plaintiff, therefore, filed Criminal Writ Petition No. 2459 of 2006 which was disposed by this court on 11/12/2006 and the order dated 8/11/2006 was quashed and set aside. The learned Judge of the Small Causes Court, therefore, directed to hear the application filed by the petitioner afresh after considering the relevant provisions of Section 340 of Cr.P.C. as well as the Judgment of the Supreme Court in the case of Pritish vs. State of Maharashtra and ors. [AIR 2002 SC 236].

3. On remand, the learned Judge of the Small

Causes Court reheard the parties, considered the order passed by this Court in Criminal Writ Petition No. 2549 of 2006 and also the law laid down in the case of Pritish (Supra) and held that when the other side is easily available before the court and raised an objection not to pass any order without hearing him, then certainly it is not desirable to dispose of any matter without hearing the other side and, therefore, the learned Judge permitted the defendant to participate in the inquiry proceeding under Section 340 of Cr.P.C. and made the Interim Notice No. 162 of 2007 taken out by the defendant, seeking permission to participate in the Inquiry proceedings, absolute by order dated 24/1/2007.

4. In para 12 of the Judgment in Pritish's case, their Lordships stated as under:-

> "12. thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the magistrate calls the

> accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the magistrate that the allegations against him are groundless and that he is entitled to be discharged."

. Their Lordships, therefore, held that there is no statutory requirement to give an opportunity of hearing to the persons against whom that court might file a complaint before the magistrate for initiating prosecution proceedings.

5. In the instant case as the party complained against was available before the court and the said party made an application that he should be heard before any inquiry is undertaken under Section 340 of Cr.P.C., the learned Judge has exercised his discretion of granting an opportunity to the defendant for being heard in the inquiry and this by itself cannot be termed as perverse or patently illegal order

and in any case the anxiety of the petitioner-plaintiff should be to get the inquiry expedited rather than keeping this petition pending before this court.

6. Hence, the petition is rejected summarily and it is directed that the inquiry under Section 340 of Cr.P.C. be completed as expeditiously as possible and preferably within a period of three months.

(B.H. Marlapalle,J.)